THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :19750 of 2007

DATED:16-11-2007

BETWEEN:

Nakka Nancharamma & 2 others.

..... PETITIONERS

AND

The Mandal Revenue Officer,
Vetapalem,
Vetapalem mandal,
Prakasam District & 3 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioners as well as the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioners question the order of the 1st respondent-Mandal Revenue Officer, Vetapalem, dated 29-01-2007, in Rc.No.B.497/2006, in resuming the lands of an extent of Ac.4.03 cents in Sy.No.297/7 to 11 situated at Vetapalem village and mandal, Prakasam District in exercise of the powers under Section 4 of the A.P.Assigned Land (Prohibition of Transfers) Act, 1977 (for brevity, 'the Act'). The said resumption order has been passed on the ground that the said lands were assigned lands and the same were transferred in violation of sub-Section 2 of Section 3 of the Act.

3. It is the case of the petitioners that the 1st petitioner's husband-Nakka Narayanareddy was assigned an extent of Ac.0.96 cents in Sy.No.297/9 vide proceedings No.1551/DK/1388, dated 28-07-1978, by the then Tahsildar, Chirala; the husband of the 2nd petitioner-Nakka Narasimha Reddy was assigned an extent of Ac.0.85 cents in Sy.No.297/8 vide proceedings No.205/DK/1388, dated 28-07-1978; and the 3rd respondent was assigned an extent of Ac.0.85 cents in Sy.No.297/7 vide D-form in F.Dis.No.1225/DK/1388, dated 30-09-1978, by the then Tahsildar.

Whileso, the 1st respondent-Mandal Revenue Officer, Vetapalem issued a notice in Rc.No.B497/06, dated 30-12-2006, to all the petitioners stating that the petitioners have contravened the provisions of sub-Section 2 of

Section 3 of the Act and accordingly, they were called upon to submit explanations within fifteen days as to why they shall not be summarily dispossessed. It is stated that the petitioners filed explanations on 12-01-2007 and they have sent representations, dated 12-01-2007, by registered post with acknowledgment due which was received by the 1st respondent on 16-01-2007. It is the case of the petitioners that they have not violated the provisions of sub-Section 2 of Section 3 of the Act and in fact, certain other persons have violated the provisions of the Act, but no action has been taken against them. However, it is the case of the petitioner that the said explanations were not properly considered and as if there is a violation the assignment pattas were cancelled.

4. Learned counsel appearing for the petitioners submits that as no reasonable opportunity has been given petitioners have no effective alternative remedy to file an appeal and as per the judgment of the Division Bench in W.A.No.389 of 2007, dated 14-10-2007, as no reasonable opportunity has been given the impugned order is liable to be set aside keeping it open for the 1st respondent to take necessary action in accordance with law.

5. I am unable to accept the said contention, firstly for the reason that the facts of the said case are not similar to that of this case and admittedly as per the perusal of the facts of the said judgment, in fact, no show cause notice was issued to the petitioner/appellant therein. It is clearly stated in the said judgment of the Division Bench that it is not in dispute that before seeking to

take over possession of the assigned land, 1st respondent did not give any notice or opportunity of hearing either of the appellants herein. As admittedly, no notice or opportunity of hearing was given to them before passing the resumption order and before taking decision, it was held that the appellants were entitled to continue in possession of the lands notwithstanding with the judgment of the Division Bench keeping it open for the competent authority for taking action in accordance with law after giving notice and opportunity to them.

6. In the instant case, admittedly, the said lands are the assigned lands as stated above. Admittedly, show cause notices have been served on all the petitioners. It is not in dispute that the said assigned lands are sold in favour of one Ravikumar. A perusal of the impugned order goes to show that as per the encumbrance certificate obtained from the Sub-Registrar, Chirala the assignees have sold the said land in favour of the said Ravikumar and pursuant to inspection it is stated that the said lands were not cultivated and the said show cause notices, dated 30-12-2006, were also served on the petitioners/original assignees as well as the purchaser-Ravikumar on 12-01-2007. A perusal of the explanation also goes to show that the petitioners have not denied the transfer of the said land in favour of the said Ravikumar, but it is stated that the sale deeds made in favour of the said Ravikumar were cancelled on 26-12-2006 i.e., before the date of issuance of the show cause notice itself. It is contended that the provisions of the said Act have no application as there is no violation. Thus, the undisputed facts are that the lands were sold in 2006 and it is stated that the said sale deeds have been cancelled by registered deed, dated

26-12-2006.

7. The question that arises for consideration is whether there is any violation of sub-Section 2 of Section 3 of the Act. The facts are not in dispute with regard to the alienation of the said land in favour of the said Ravikumar and the cancellation of the sale deed which was effected in March/April, 2006. The said lands were assigned in favour of the landless poor, and therefore, the same are not transferable and there is a prohibition of transfer of the said lands under Section 3 of the Act. If the lands are used for the purpose other than it was assigned it is a violation under sub-Section 2 of Section 3 of the Act and if the lands assigned to the landless poor are transferred it is a violation under sub-Section 2 of Section 3 of the Act. Therefore, any transfers made in contravention of sub-Sections 1 and 2 shall be deemed null and void as contemplated under Section 3 of the Act.

8. Learned counsel appearing for the petitioners submits that even if there is a violation of sub-Section 1 of Section 3 of the Act, the lands are liable to be restored in favour of the original assignee but cancellation of the assignment made by the 1st respondent under Section 4 of the Act is illegal and arbitrary.

9. A perusal of Section 4 of the Act goes to show that if the Mandal Revenue Officer satisfies that the provisions of sub-Section 1 of Section 3 of the Act have been contravened he may, by order take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and restore the same to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the said land to Government for

assignment to landless poor persons in accordance with the rules for the time being in force.

10. In the instant case, the breach is not in respect of sub-Section 1 of Section 3 of the Act, but it is under sub-Section 2 of Section 3 of the Act. Therefore, I am of the opinion that Section 4(1) of the Act is not applicable, but however,
Section 4(3) of the Act contemplates that for the purposes of this Section, where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until contrary is proved, that there is a contravention of the provisions of sub-Section 1 of Section 3 of the Act.

11. In the instant case, admittedly the lands were sold in favour of the said Ravikumar, and the said Ravikumar developed the same and therefore, it cannot be said that there is a violation, but however, against the orders passed under Section 4(1) of the Act appeal lies to the Revenue Divisional Officer, but the petitioner without availing the remedy filed this Writ Petition on the ground that reasonable opportunity has not been given. It is stated that for the said notice explanation has been submitted, and the same has been considered and resumption orders have been passed.

12. In view of the aforesaid facts and circumstances of the case, I do not see any merits in this Writ Petition. Accordingly, Writ Petition is dismissed. There shall be no order as to costs.

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V.ESWARAIAH,J

16th November, 2007.
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